

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Dr. Emmanuel G. Paniotte)	
)	
vs.)	
)	Docket 01-0393
Illinois Bell Telephone Company)	
)	
)	

**VERIFIED MOTION OF ILLINOIS BELL TELEPHONE COMPANY
TO DISMISS COMPLAINT**

Illinois Bell Telephone Company (“Ameritech Illinois”) hereby moves to dismiss the above-captioned complaint (the “Complaint”) on grounds that the claims asserted are outside the Commission’s jurisdiction. Moreover, the Complaint is moot or otherwise seeks relief that cannot be granted by the Commission. In support of this motion, Ameritech Illinois states the following.

INTRODUCTION

1. Dr. Emmanuel G. Paniotte filed this Complaint pro se on May 14, 2001, disputing \$96.00 in charges arising from a repair visit on January 19, 2001. Complaint, p. 2. Dr. Paniotte did not subscribe to the Linebacker service during the period at issue. Affidavit of Joseph D. Dehaai ¶ 3 (“Dehaai Aff.”) (attached as Appendix 4).

2. The repair visit appears to have been necessitated by a problem with the wiring or equipment on Dr. Paniotte’s side of the network interface. See Complaint, p. 2 (repair technician stated that there was “nothing wrong” with Ameritech Illinois’ lines), p. 3 (Ameritech Illinois advised Complainant that his “telephone instruments” were

defective).¹ Ameritech Illinois' repair history for the account also shows that the technician isolated the problem to the Complainant's "inside" wiring. See Affidavit of Herbert M. Jennrich ¶ 3 ("Jennrich Aff.") (attached as Appendix 5).

3. The Complaint states that the service problem resulted from a severed wire on the exterior of Dr. Paniotte's residence, which he reconnected to restore dial tone to the line. Complaint, p. 2. He photographed the severed wire and provided counsel for Ameritech Illinois with a copy of the photograph.

4. The gray box depicted in the photograph is the Network Interface Device ("NID"). Jennrich Aff. ¶¶ 4-5. The severed wire in the photograph appears to be located on the Complainant's side of the network interface for his building, and there is currently a splice in the wiring on the Complainant's side of the NID. Id. ¶ ¶ 4-6.

5. After Dr. Paniotte complained about the repair charges, Ameritech Illinois issued a \$26.88 goodwill adjustment to his account on February 26, 2001. Dehaai Aff. ¶ 4.

6. Dr. Paniotte's telephone service was disconnected on April 30, 2001. Complaint, p. 3. At the time, his account had a past due balance of \$131.38. Dehaai Aff. ¶ 5.

7. Ameritech Illinois re-established service to Dr. Paniotte's household on June 13, 2001, under Account No. 847-835-3008-504. Dehaai Aff. ¶ 7. Ameritech Illinois also issued a good will adjustment of \$85.98 to Dr. Paniotte's prior account on August 1, 2001, to clear the balance owed on that account. Dehaai Aff. ¶ 6.

¹ The Complaint states that there was no problem with the "telephone instruments" because they worked when connected to Dr. Paniotte's second telephone line. Complaint, p. 3.

8. The Complaint, at page 3, identifies four specific statutory provisions that Ameritech Illinois allegedly violated through its actions regarding Dr. Paniotte's account. First, it violated § 510/2(12) of the Uniform Deceptive Trade Practices Act, 815 ILCS 510/2(12), by advising Dr. Paniotte that his telephone equipment was defective when it was not. Second, it violated § 505/2 of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, by billing him for repair services when the technician said that he would not be billed. Third, it overcharged him in violation of § 5/154-506(a) of the Public Utilities Act² by billing him for a service it did not provide. Finally, it deprived Dr. Paniotte of "Due Process of Law," and violated § 13-203 of the Public Utilities Act, 220 ILCS 5/13-203, when it disconnected his telephone service. The Complaint also states that Ameritech Illinois has defamed Dr. Paniotte (Complaint, p. 3), suggesting that he also may be asserting a common law defamation claim.

9. The only specific relief requested in the Complaint is that the Commission protect the Complainant and enforce "the Consumer Protection Laws." Complaint, p. 2.

ARGUMENT

The Commission should dismiss the Complaint for three reasons. First, the Commission lacks jurisdiction over the Complaint because the claims it asserts are not cognizable here or are inapplicable to Ameritech Illinois. Second, the Commission also lacks jurisdiction over the subject matter of the Complaint because it involves a deregulated service. Finally, Dr. Paniotte's claims are moot.

² The Public Utilities Act does not contain a provision with this section number.

Inappropriate Causes of Action

The Complaint should be dismissed because it asserts claims that are outside the Commission's jurisdiction or that are inapplicable to Ameritech Illinois.

The Commission cannot hear several of the claims set forth in the Complaint. Ameritech Illinois' supposed violation of the Consumer Fraud Act, 815 ILCS 505/2, arising from allegedly billing Dr. Paniotte under false pretenses, cannot be brought before the Commission. See Order, Citizens Utility Board v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 00-0043, at 12 (Jan. 23, 2001) ("we lack jurisdiction to enforce the Consumer Fraud Act")(attached as Appendix 6). The Deceptive Trade Practices Act, 815 ILCS 510/1 et seq. ("DTPA"), which allows a "court" to grant "injunctive relief" (815 ILCS 510/3) to prohibit deceptive trade practices, is interpreted in tandem with the Consumer Fraud Act. See 815 ILCS 505/2 (defining unlawful practices under the Consumer Fraud Act to include actions covered by the DTPA). Accordingly, the Commission also would not be able to consider Dr. Paniotte's claim under that statute.³ Finally, to the extent that Dr. Paniotte's Complaint may be seeking redress for defamation (see Complaint at 3), the Commission cannot adjudicate such a common law cause of action. See 220 ILCS 5/10-108 (describing Commission's complaint procedures as addressing only violations of the Public Utilities Act or of Commission rules or orders).

The sections of the Public Utilities Act cited in the Complaint similarly do not support claims against Ameritech Illinois. Dr. Paniotte alleges that the company violated § 154-506(a) of the Act by overcharging him for a service it did not provide. See

³ Moreover, the DTPA was intended to prohibit unfair competition, not to serve as a consumer protection statute. See Chabraja v. Avis Rent A Car System, Inc., 192 Ill. App. 3d 1074, 1078 (1st Dist. 1989). Accordingly, there are only limited circumstances when an individual consumer can bring a claim under the Act. See Robinson v. Toyota Motor Credit Corp., 315 Ill. App. 3d 1086, 1098-99 (1st Dist. 2000).

Complaint at 3. The Public Utilities Act does not contain a section bearing that number, however. Section 15-506(a) of the Act does address overcharges – but only by common carriers by pipeline, such as natural gas and water companies.⁴

The Complaint also alleges that Ameritech Illinois violated § 13-203 of the Act because it denied him due process of law, in the course of the dispute, by disconnecting his service and returning his check.⁵ That section simply defines what is and is not a telecommunications service (see 220 ILCS 5/13-203), and thus may not create any substantive cause of action. Even assuming that § 13-203 could give rise to liability, Dr. Paniotte’s claimed due process violation is identical in all material respects to the Fourteenth Amendment claim rejected by the United States Supreme Court in Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

In Jackson, as in the Complaint, a regulated company (there, an electric utility) had discontinued service to a customer. The customer then sued the company, alleging that the disconnection constituted a deprivation of life, liberty or property without due process under the Fourteenth Amendment of the United States Constitution. The Court rejected her claim, recognizing that the utility, although regulated, was still a private company and therefore was not subject to the customer’s constitutional claim. In so doing, the Court reaffirmed “the essential dichotomy set forth in that Amendment between deprivation by the State, subject to scrutiny under its provisions, and private conduct, ‘however discriminatory and wrongful,’ against which the Fourteenth

⁴ Dr. Paniotte may be attempting to state a claim of excessive charges under § 9-252 of the Act. As explained in the other parts of this motion, however, the charges relate to a deregulated service and, in any event, claims arising from those charges are moot.

⁵ The materials attached to the Complaint suggest that Dr. Paniotte mailed a check made payable to Ameritech to an address of 160 N. LaSalle Street # C-800, Chicago, IL 60601. That is the address of the Commission’s Chicago office.

Amendment offers no shield.” Jackson, 419 U.S. at 349 (quoting Shelley v. Kramer, 334 U.S. 1, 13 (1948)). Dr. Paniotte’s Complaint ignores that “essential dichotomy” by alleging a constitutional due process violation by a private party, Ameritech Illinois.

In summary, the Complaint is based either on claims that the Commission has no authority to hear or on sections of the Public Utilities Act that are inapplicable to Ameritech Illinois. These claims should be dismissed.

Deregulated Service

In addition to basing claims on inapplicable statutory sections, Dr. Paniotte also is complaining about charges for repair of inside wiring. Since the Commission has no jurisdiction over such a deregulated service, the Complaint should be dismissed.

The Commission deregulated inside wire in a series of orders in the late 1980’s. See, e.g., Second Interim Order, Ill. C.C. Dkt. 86-0278 (Dec. 10, 1986) (attached as Appendix 1); Third Interim Order, Ill. C.C. Dkt. 86-0278 (Sept. 30, 1987) (attached as Appendix 2). As a part of those orders, the Commission defined a demarcation point at which the telephone company’s network would end and the customer’s premises wire would begin. This demarcation was necessary both to define the end of the regulated network and to support the cost and rate adjustments that were necessary to remove inside wire investments from telephone companies’ rate bases. With respect to “simple” inside wire, the Commission determined that, on a forward-going basis, the demarcation point should be located outside the building and delineated by the installation of a network interface device, as is the case with Dr. Paniotte’s installation. Third Interim Order, supra, pp. 5-6.

The Commission's rules now specifically identify the installation and maintenance of inside wire as a deregulated service. 83 Ill. Admin. Code § 711.10(b). As a result, the Commission should dismiss any complaint addressed to the installation or maintenance of inside wire. Grigas v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 90-0302 (1991) (attached as Appendix 3). In Grigas, as here, the complainant alleged that Ameritech Illinois charges for a repair visit were fraudulent because the repair technician did not find the service problem but simply asserted that the problem resulted from the complainant's telephone set. Id. at *1. The Commission dismissed the complaint because it lacked authority to grant relief when the complaint "relates to a dispute about charges for services no longer regulated by this Commission." Id. at *2.

Like the complaint in Grigas, Dr. Paniotte's complaint arises from a dispute about an unregulated service: repair of customer premises inside wire. The Commission lacks authority to hear such a claim and should instead dismiss the complaint.⁶

Mootness

The only relief explicitly requested in the Complaint is that the Commission protect Dr. Paniotte and "enforce the Consumer Protection Laws." Complaint, p. 2. As discussed above, the Commission does not have jurisdiction over claims brought under the Consumer Fraud Act or the DTPA, so it would not have the ability to provide the relief sought.

Moreover, even assuming that the Commission had jurisdiction over Dr. Paniotte's claims, he already has received the only remedy he could obtain from this

⁶ Disputes about an unregulated service should be litigated in courts of general jurisdiction. Sutherland v. Illinois Bell Telephone Co., 254 Ill. App. 3d 983, 993 (1st Dist. 1993) (rejecting argument that inside wire complaint should have been brought before the Commission). Dr. Paniotte will not be prejudiced by a dismissal here because he remains free to pursue his claim in small claims court.

proceeding. His telephone service was re-established on June 13, and Ameritech has issued a credit to his account equal to the disputed amount of \$85.98. See Dehaai Aff. ¶¶ 6-7.⁷ Dr. Paniotte's ability to obtain such relief from the Commission thus is moot. See Mecartney v. Hale, 318 Ill. App. 502, 506, 48 N.E.2d 570, 571 (1st Dist. 1943).

CONCLUSION

THEREFORE, for all of the foregoing reasons, the Complaint should be dismissed.

Respectfully submitted,

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⁷ This credit was an adjustment to maintain customer good will and does not represent a decision by Ameritech that its charges to make a repair visit to Dr. Paniotte's residence were incorrect.